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December 5, 1995

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: MM Docket No. 93-165
RM-8247
Athens, Ohio

Dear Mr. Caton:

Transmitted herewith on behalf of Nelsonville TV Cable, Inc. are an original and four copies of its Opposition to Application for Review in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
Counsel for Nelsonville TV Cable, Inc.

Enclosures

cc: John A. Karousos, Chief, Allocations Branch (with enclosure) **By Hand Delivery**

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED
DEC 5 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Athens, Ohio).)

MM Docket No. 93-165
RM-8247

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OPPOSITION TO APPLICATION FOR REVIEW

Nelsonville TV Cable, Inc. ("NTVCI"), by its attorneys, hereby respectfully submits its Opposition to the Application for Review in the above-captioned proceeding submitted by David W. Ringer ("Ringer"). With respect thereto, the following is stated:

1. On October 12, 1995, the Policy and Rules Division of the Commission released a Report and Order, DA 95-2118, which affirmed the Commission's earlier Order, DA 94-1270, released November 23, 1994. The November 1994 Order opened a new filing window for the channel allotted to Athens, Ohio, pursuant to the above-captioned proceeding. NTVCI filed an application in response to this window notice. That application is now pending (File No. ARN-950206NA).

2. Ringer contends in his application for review, however, that the Commission should not have opened the new filing window. On January 25, 1994, the Commission released a Report and Order, DA 93-1584, wherein it allotted Channel 240A to Athens and opened a window for the filing of applications beginning on March 11, 1994, and ending on April 11,

1994. On February 25, 1994, during the time between the release of the Report and Order and the scheduled opening of the filing window, the Commission released a Public Notice, 9 FCC Rcd. 1055 (1994), freezing the processing of all applications for new broadcast facilities (the "Freeze Order"). The Commission further stated that "during the freeze, the Mass Media Bureau will not issue cutoff lists or adopt FM filing windows for new filing opportunities....Any such cutoff lists or orders adopted prior to the imposition of this freeze will be suspended for the period of the freeze." Id. Nevertheless, Ringer and three other applicants filed applications for the Athens channel by April 11, 1994.

3. Ringer now argues that the Freeze Order did not effectively suspend orders establishing filing windows which had been published in the Federal Register because the Freeze Order itself was not published in the Federal Register. Ringer, however, does not dispute that he had actual notice of the Freeze Order. The Freeze Order was released prior to the scheduled first day for submitting applications for the Athens allotment. Nevertheless, Ringer claims that the Freeze Order was ineffective because it was not phrased clearly enough for him to understand its complete meaning. Even if Ringer had not had actual notice of the Freeze Order, his claims of prejudice from a lack of understanding of the suspension of the filing window are speculative at best. Ringer submitted an application by the originally scheduled closing date of the window. That application was returned to him without prejudice to its refiling during the more recent filing window.

4. Contrary to Ringer's assertion, the Freeze Order's intent is quite clear on its face. As set forth above, the Commission stated that "during the freeze, the Mass Media Bureau will not issue cutoff lists or adopt FM filing windows for new filing opportunities....Any such cutoff

lists or orders adopted prior to the imposition of this freeze will be suspended for the period of the freeze." 9 FCC Rcd. 1055. In this context, "such ... orders" can refer only to orders adopting FM filing windows. Thus, the Commission explicitly stated that orders opening FM filing windows which were adopted before imposition of the freeze would be suspended during the freeze. The Report and Order in this proceeding was such an order adopted before imposition of the freeze. Therefore, the only logical conclusion is that the Report and Order was suspended. If the order adopting the filing window was suspended, then it follows that the filing window itself was suspended. The Athens filing window had not yet opened at that time. The fact that the Commission did not in so many words state that the Athens filing window was suspended is irrelevant, since the applicability of the Freeze Order to the Athens proceeding was clear. NTVCI was entitled to rely upon the logical interpretation of the Freeze Order, which indicated that the opportunity to submit an application for the Athens allotment would come at a later date, and NTVCI did so rely upon the Commission's statements. The Commission cannot now dismiss NTVCI's application file based solely upon the confusion of other parties.

5. Moreover, Ringer's claim of prejudice is quite speculative. While it is true that additional parties submitted applications during the re-opened filing window, Ringer had no right to expect that only a certain number of applications would be filed during the filing window as originally scheduled. NTVCI knows of at least one party, itself, which also would have submitted an application for the Athens allotment but for the suspension of the filing window. Ringer has no way of knowing how many other parties fall into the same category. He was not prejudiced by allowing those parties who would have filed applications but for the suspension of the filing window to submit applications during the re-opened window period and to prosecute

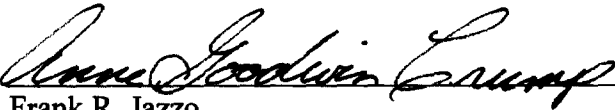
those applications. Although it is theoretically possible that some additional parties submitted applications, it is equally probable that parties previously interested in the allotment lost either their interest or their ability to file an application during the intervening months. Thus, Ringer was simply placed in the same position he would have been in absent the filing window.

6. If, on the other hand, the Commission were to rescind its Order establishing the current filing window, NTVCI would be unfairly prejudiced. Like Ringer, NTVCI received actual notice of the Freeze Order. Unlike Ringer, NTVCI then acted in reliance upon that Freeze Order. Because the Commission indicated that filing windows for new FM stations would be suspended, NTVCI rationally decided that it would not file an application for the Athens allotment at that time but rather would wait until the filing window was re-opened. When the Commission in due course did announce a new filing window, NTVCI prepared and filed its application. If the Commission were to rescind its order establishing this window, NTVCI's application would be unfairly dismissed. Further, NTVCI would have been induced to expend funds on the preparation, filing, and prosecution of an application which NTVCI could not have known would be unacceptable. The Commission's Freeze Order indicates that NTVCI and other similarly situated parties would have an opportunity to file applications at a later date. NTVCI relied upon that promise. It would be fundamentally unfair for the Commission now to deny the promised filing opportunity and dismiss applications filed in reliance upon that promise, especially when the effect would be to benefit other parties which did not observe the Freeze Order.

WHEREFORE, the premises considered, NTVCI respectfully requests that the Commission deny the application for review filed by Ringer and that it affirm the October 12, 1995, Report and Order, DA 95-2118, affirming the re-opening of a filing window for Channel 240A at Athens, Ohio.

Respectfully submitted,

NELSONVILLE TV CABLE, INC.

By: 
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December 5, 1995

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Opposition to Application for Review" were sent this 5th day of December, 1995, by first-class United States mail, postage prepaid, to the following:

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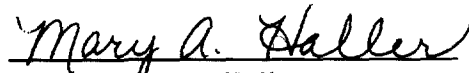
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